

Title	Appellate Procedure: Certificate of Interested Entities (adopt Cal. Rules of Court, rule 14.5)
Summary	In order to help appellate justices identify cases in which they may need to disqualify themselves, this proposal would establish a new requirement that parties attach to their principal brief a certificate identifying entities that have an interest in either a party to or the outcome of the appeal.
Source	Appellate Advisory Committee Justice Joyce L. Kennard, Chair
Staff	Heather Anderson, Committee Counsel, 415-865-7691, heather.anderson@jud.ca.gov
Discussion	<p>Canon 3E(3)(d) of the California Code of Judicial Ethics requires that appellate justices disqualify themselves whenever “[t]he appellate justice, or his or her spouse, or a minor child residing in the household, has a financial interest or is a fiduciary who has a financial interest in the proceeding, or is a director, advisor, or other active participant in the affairs of a party.” The canon generally defines “financial interest” as “ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value exceeding one thousand five hundred dollars.”</p> <p>When an entity in which a justice has a financial interest is a named party or is the subject of a proceeding, a justice can easily determine whether to disqualify himself or herself. However, sometimes an entity’s involvement in a proceeding is not readily apparent from the names of the parties in an appeal or from the record or briefing in the appeal. This “hidden” involvement most commonly arises when a named party is actually owned by another entity of a different name and the justice has a financial interest in that other entity.</p> <p>To help Court of Appeal justices identify these other “hidden” entities who have an interest in the proceedings, the Appellate Advisory Committee proposes the adoption of new rule 14.5 this rule would require that parties attach to their principal brief a certificate identifying entities that have either a majority ownership interest in a party to the appeal or a substantial direct financial interest in the outcome of the appeal. This requirement is similar in concept to the California Supreme Court’s requirement that, upon the granting of review, parties file a <i>Certification of Interested Entities or Persons</i>, but the scope of the information that parties must provide is somewhat</p>

narrower (see Internal Operating Practices and Procedures of the California Supreme Court, section IV. L.). Because the Supreme Court already has a similar requirement, new rule 14.5 would apply only in Court of Appeal proceedings.

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Attachment

Rule 14.5 of the California Rules of Court would be adopted, effective January 1, 2005 to read:

**Rule 14.5 Certificate of interested entities**

**(a) Definitions**

For purposes of this rule:

- (1) “Certificate” means a Certificate of Interested Entities signed by appellate counsel or an unrepresented party.
- (2) “Entity” means a corporation, partnership, firm, association of persons, or any other entity other than a natural person.
- (3) A mutual or common investment fund’s ownership of securities or bonds issued by an entity does not constitute a financial or ownership interest in that entity.

**(b) Attaching a certificate**

- (1) In any case in which an entity is a party, that party must attach a certificate to its principal brief either identifying any entity that has more than a 50 percent legal or equitable ownership interest in the party or stating that there is no such entity. This requirement does not apply to a governmental entity or its agencies.
- (2) In all cases, any party knowing of an entity not already identified under (b)(1) that has a substantial direct financial interest in the outcome of the case must attach a certificate to its principal brief identifying that entity. This requirement does not apply to a financial interest of a governmental entity or its agencies. An entity does not have a direct financial interest in the outcome of the case under this section simply because that entity is in the same industry or field of business as a party and the case might establish a precedent that would affect that industry or field of business.

**(c) Supplemental information**

A party that learns of changed or additional information that must be disclosed under (b) must promptly serve and file a supplemental certificate in the reviewing court.

**Advisory Committee Comment (2005)**

**Subdivision (b)(2).** Examples of entities that have a substantial direct financial interest in the outcome of the case include (1) an entity that has more than a 50 percent legal or equitable ownership interest in a property or an entity that is the subject of the controversy in the case; (2) an entity that has an ownership interest in the judgment in the case; and (3) an entity that is a wholly owned subsidiary of a party and that would be substantially affected by the outcome of the case.